UNIVERSAL
LIBRARY

A HANDBOOK
TO THE
LEAGUE OF NATIONS

BY
SIR GEOFFREY BUTLER, K.B.E., M.A.
FELLOW, LIBRARIAN AND
LECTURER IN INTERNATIONAL LAW AND DIPLOMACY
OF CORPUS CHRISTI COLLEGE
CAMBRIDGE

WITH AN INTRODUCTION BY
THE RIGHT HON. LORD ROBERT CECIL, K.C., M.P.

LONGMANS, GREEN AND CO.
39 PATERNOSTER ROW, LONDON
FOURTH AVENUE & 30TH STREET, NEW YORK
BOMBAY, CALCUTTA, AND MADRAS

INTRODUCTION

THIS is a very useful little book, which I hope may have a large circle of readers. It aims at placing the League of Nations in its true historical and constitutional perspective. No one can hope to understand what the League is and what its prospects are if he does not realise that it is but one step forward —a very large one, no doubt—in the evolution of international relations which has been in progress for centuries.

The question which the future must solve is whether this step is in the right direction. Sir Geoffrey Butler argues—I think effectively—that it is, because it proceeds on the line of the Concert of Europe rather than on that of the Balance of Power. The two conceptions are antithetical. The Balance of Power was purely negative. It did not aim at improving the common life of nations. It accepted the proposition that every nation was the potential enemy of every other nation, and it merely sought to limit the consequences of that disastrous assumption. The Concert of Europe, or, as Sir Geoffrey Butler calls it, the Concert of the Powers, did recognise that the peace of the world was the greatest of all interests for each one of the nations, and did seek by international co-operation to remove or mitigate

the causes of war. I am grateful to Sir Geoffrey for having called attention to the extent of the debt owed to the late Lord Salisbury for his efforts to advance this side of international relations. But Lord Salisbury would have been the first to admit that the Concert had serious defects as an international instrument. Chief among them was the fact that it had no continuous existence or permanent machinery. It was only brought into action when an emergency had arisen, and to begin to exercise its functions it required the consent of all the Powers concerned. Another disadvantage was that the Concert only embraced the chief European Powers. The United States—indeed, all America and Asia—were left out. Both of these defects will be remedied if the Covenant is carried into effect. Peace will be recognised as the interest of all nations in and out of Europe, and the duty of preserving it will be acknowledged by every one of them. A permanent organisation is also to be created which will be kept in working order by constant use in promoting peaceful international co-operation, so that when danger of war arises joint action by the Powers of the world can instantly be taken.

Undoubtedly the League is an experiment, and it may fail. If it does there is no hope. No one can seriously believe that any development of the idea of the Balance of Power can give any satisfactory result. Peace cannot be preserved by systematising the preparation for war. And unless peace can be preserved our civilisation will perish, just as surely as did the Roman civilisation, and far more rapidly.

It is, therefore, the most urgent of all civic duties to take care that the League does not fail. Its suc-

cess depends entirely on the instructed support of the peoples of the world, and perhaps especially of the British people. Such a book as this furnishes the means of instruction. It is a contribution to the great work of world pacification, and as such let us welcome it and bid it God-speed.

ROBERT CECIL.

November 11, 1919.

PREFACE

'Non fecimus altos nimis et obscuros in his rebus questionum sinus; sed primitias quasdam . . . dedimus.'—Aulus Gellius ('Noctes Atticæ,' præf.).

THERE is perhaps no need of an excuse for elementary treatment of the subject of the League of Nations. If the present Paris scheme is to meet with permanent success, it cannot remain an abstraction, buried in Government papers or in legal text-books, and those of the general public who wish to form an estimate of its ability to meet the difficulties that lie ahead, may be grateful to have a short treatise which tries to place the League in its historical perspective. In writing this Handbook I do not pretend to full adequacy of treatment, and what I have written can never be classed with the treatises of the men whose works I often quote, and of whose erudition I have consistently made use. I have tried to keep the ordinary citizen in mind, and I have avoided complications which should properly appear in a more elaborate treatise on the subject. Even when treating of the mechanism of the Paris scheme (Chapters VI and VII) I have tried to banish all detailed treatment except just so much as indicates how in a

normal case it is hoped that the mechanism of the League will work.

I hope this book will be found useful in educational circles, because if the League of Nations is to be rejected by the next generation, as some pessimists affirm, it will be this generation's fault if their successors are then found dealing with a political contrivance unfamiliar to them and abnormal. The curse of much historical teaching of the present day is premature generalisation, drawn from facts unknown to the student, and imbibed by him or her at second hand. I have tried to reduce such generalisations to a minimum. At the same time I have tried to indicate by full annotation how each point herein raised can be further pursued either by the teacher or by the general reader.

In conclusion, may I say how greatly I shall value hints for improvement of this handbook, both from members of the general public and from my colleagues of the teaching profession here and across the seas ?

My gratitude to Lord Robert Cecil is very deep. I take this opportunity of thanking my colleague, Mr. K. W. M. Pickthorn, for several suggestions of value.

G. B.

Corpus Christi College,
Cambridge.

CONTENTS

A HANDBOOK TO THE LEAGUE OF NATIONS

CHAPTER I

THE ORIGIN OF THE LEAGUE [1]

The League of Nations.—In 1919, at the end of the Great War, the Powers which had been fighting against Germany met at Paris to discuss the terms which they would impose upon the beaten enemy.

[1] The text of the League of Nations is best studied in the two forms in which it was issued as a Government White Paper, to wit, in

(*a*) Miscellaneous No. 1 (1919). A draft agreement for a League of Nations, presented to the plenary inter-allied conference of February 14, 1919. 1*d.* net;

and in the revised version,

(*b*) Miscellaneous No. 3 (1919). The covenant of the League of Nations, with a commentary thereon. 2*d.* net. See below, p. 49.

The three best books which, without being too technical, give a more exhaustive account of the League than is given in this Handbook are:

Dr. T. J. Lawrence: *Lectures on the League of Nations.* Bristol: J. W. Arrowsmith, Ltd., 1919. 1*s.* net. An admirable analysis of the draft agreement.

Lt.-General Rt. Hon. J. C. Smuts: *The League of Nations: a Practical Suggestion.* Hodder & Stoughton, 1918. 6*d.* net.

Prof. L. Oppenheim: *The League of Nations.* Longmans,

Very many persons expected that they would settle the terms, and offer them for signature at once to Germany and its allies, much as Prussia had offered terms to France after the Franco-Prussian War of 1870.[1] There was some surprise, therefore, when it became known that, concurrently with the discussion of peace terms, representatives of the Allies were at work drawing up a League of Nations, in the hope that by means of such a League war might be rendered less likely in the future.

This news was received with mixed feelings. Some people saw in the League one of those 'divine events to which the whole creation moves.'

Green & Co., 1919. This, though written before the publication of the Paris scheme, is a mine of useful information. 6*s*. net.

See also *The Times*, June 14, 1919, for Lord R. Cecil's views, and of July 16, 1919, for those of President Wilson. Two telegrams, one from Washington, the other from Montana, in *The Times* of September 12, 1919, give an impression of the views of those for and against the Paris scheme in U.S.A. The attitude of the Dominion statesmen, especially those of Canada and South Africa, is summarised in a *Times* leading article of September 13. The attitude of the French can be gathered, among other authorities, from M. Leon Bourgeois' article in the French Supplement published with *The Times* of September 6, 1919. See also M. Gabriel Hanotaux' two articles on 'The Treaty of the 28th June,' in the *Revue des Deux Mondes* for August 1 and August 15, 1919, respectively.

Garvin, *The Economic Foundations of Peace*, is most valuable from the economic point of view.

[1] For a lucid account of the negotiations between Bismarck and the French representatives in 1871, see Gabriel Hanotaux, *Histoire de la France contemporaine*, vol. i., and especially pp. 14–28, 79–85, 98–128, 255–285, 336–343, 419–452, 483, 493–507, 548–569. This description of the difficulties confronting M. Thiers, and his success in handling them, makes interesting reading with the recent peace negotiations borne in mind.

Others, to whom the development of institutions had always seemed not so much a series of historical incidents in an ethical process as a constant readjustment of political machinery to correspond with the real distribution of power in the community, were sceptical as to the enduring qualities of the League in the rough and tumble of European politics. Ultimately the public opinion of Europe and perhaps America seemed to be determined to give the League a trial. Million upon million of lives had been lost in the preceding five years of war. Million upon million had been wounded. Horrors innumerable, experienced and apprehended, had come upon the inhabitants of the countries adjacent to the vast battle area. A new spirit of freedom and of independence was the heritage left mankind by those who had fallen in the war : the common sense of their legatees seemed to resolve that the best war memorial that could be erected to them was the perpetuation of this spirit. As an instrument for such perpetuation mankind was prepared to give the League of Nations its chance. Such was the situation when peace was signed, June 28, 1919.

The League's Historical Background.—This resolution upon the part of the men and women, in whose hands the reshaping of the world now lay, was not a decision out of the blue. A study of history indicated that as the savage tribe developed into the primitive community, as that in turn became the Nation State, as within the Nation State the personality of the individual made itself felt, and contrariwise the common good of the whole body made its demand upon the individual, so the need for law became apparent, alike to safeguard the fruits of each fresh

development, as also to bind together the human society that might otherwise have disintegrated into anarchy under the stress of the conflicting forces which out of their conflict built up such development. The mechanical breaking down of international barriers, the improvement of locomotion by land, sea, and air, the perfecting of electric telegraphs and telephones, the return to mediæval conditions in the unity of the world of thought and scholarship, all gave men and women to wonder whether, without sacrificing the proved virtues of a sturdy nationalism, it was not time for giving written recognition to certain international ideas that had come into existence, whether up to then their existence had been fully realised or not.

The Birth of the Individual.—It used at one time to be the delight of poets and imaginative writers to talk of the 'noble savage' and the 'free savage.' They did so usually under the conviction that their contemporary life was restricted, monotonous, or complicated. We now know that the savage, instead of living an unrestrained life, such as might be led, according to novelists, by modern travellers cast up upon a coral island, was hemmed around by the most rigid conventions of tribal or totem custom,[1] to break which conventions meant instant death or disgrace. From earliest youth the savage had his course of life prescribed for him. He had to be initiated, at the prescribed times and by the prescribed methods, into the man-

[1] Sir J. G. Fraser's books (e.g. *The Golden Bough*) are full of rich illustration of the nature of savage life—see in particular his *Origin of Kingship*. See also Figgis, *The Divine Right of Kings* (chap. ii.).

hood of the tribe ; could only marry outside his own and sometimes only into certain other totem groups ; lived in terror of the witch doctors' ' smelling-out ' to an extent familiar to all readers of Sir Rider Haggard's books about the Zulus. When he became an old man, an elder of the tribe, his relation to the tribal custom did not alter, except in so far as it was the part of the elders to administer it and see that it was observed by all. In a word, the position of the savage differed little from that of the animals, of whose still more rigid custom Kipling has written:

' Now this is the law of the jungle, as old and as true as the sky;
And the wolf that shall keep it may prosper, but the wolf that shall break it must die.'

From this brutish state release came only through the rising up of an individual gifted with force enough to strike terror into the other members of his tribe, and thereby with authority enough to overawe the witch doctors and their vested interests. Sometimes it was a medicine man who did it ; sometimes ' war begat kings,' and it was leadership in council or the field that gave this single member of the clan his power. In effect, he said to the community that henceforward his will, and not the tribal custom, should be supreme. He dared the gods. He became a king among his people. The individual will and the individual point of view were born. That individual point of view was soon to be shared with other men than he who first asserted it.

CHAPTER II

THE NATION STATE

The Birth of the Nation State.—The emergence of the individual point of view as opposed to that of the blind rule of tribal custom formed the foundation upon which human society could build its betterment. All history as studied to-day in schools, be it Greek, Roman, foreign, or English, shows only the combination of separate individual personalities into a pattern or community that differed in different ages and was called by different names according to the shape it took. The most studied period of classical history describes an intensified form of such corporate organisation, the city State.[1] The Oriental historian points both to the Old Testament and to the earliest records of Mohammedanism for graphic contemporary pictures of what is termed the theocratic State, the essence of which is found in the fact that the powers that be claim, or are thought, to be God's vicegerents, and base on that the sacrosanct nature of their authority. In English history through the Middle Ages, and in the history of many European countries, though by no means all kept the English pace of its later development and transformation, the

[1] See, for example, Warde Fowler, *The City State of the Greeks and Romans.*

feudal principle, intensified in England by the Norman Conquest, can be seen to be at work. Logically feudalism is bound up with the principle of decentralisation. The king parts with the exercise of certain of his powers in return for certain services owed him by, and duly claimed from, the lordling under him to whom he farms it out. Yet strong kings, like the Conqueror and the first two Henrys, using the ultimate authority as overlord, from which the kingship never parted, gradually concentrated in their hands all functions of administration to the exclusion of all local, baronial, and decentralising rights. But if the king's law and the king's courts and the king's authority were to stand alone in England, because, on the whole, it was a better law and a better system of administering justice than those of any of his rivals, including the most powerful of all, the Church, nevertheless the king had to make a compromise with the community. For generations men reasoned about this clash or conflict. It was the glory of Edward I that it was he who finally gave expression to ideas that had come into existence and clamoured for legal and constitutional embodiment. Corporations, districts, interests were henceforward to have their representatives in the council of the nation. England needed but the strong leadership of the Tudors to tide over the period of this new organism's infancy, and it stood before the world as an example no longer of the feudal but of the Nation State.[1]

[1] For a technical but lucid account of the development of England from feudalism to constitutionalism see George Burton Adams, *The Origin of the English Constitution*, especially chap. iv.

See also Pollard, *History of England* (Home University Library Series), where the Lancastrian period, omitted by me, is treated.

Interaction of the Nation States.—Mediæval history, then, treats of a Europe slowly changing from a feudal organisation to that of a number of contiguous Nation States. The process, which was reluctant, was heralded and foreshadowed by the recrudescence in Italy of the city State. The Englishman and the Frenchman of the Middle Ages had much in common. Each was a member of the Catholic Church, each could pass from Oxford to Paris, thence also to Bologna, Salerno, and elsewhere, but neither need violently change his habit of life nor his attitude toward it. Latin provided both with a common tongue in which they could express themselves and could be understood. The line of demarcation between the nations was not deeply marked. When the Nation States of the Renaissance rose all this was gradually changed. The Frenchman became a law unto himself. He began, for instance, to wish to see incorporated within the boundaries of France the inhabitants of the neighbouring French-speaking duchies, the allegiance of whose rulers to the French king had till then been ill defined and a source of controversy. The cement that bound the kingdom together was in France, as in England, mixed in the royal laboratory, even if the ingredients were different, and if *parliament* is not the same as *parlement*. The Frenchman lost touch with the Englishman or the German. They had no more in common than had the citizen of Pisa with the citizen of Florence. The Nation State was forced to deal with the Nation State. Their representatives met as strangers, and their differences, when they met, could no longer be regarded as the fascinating, if quaint, local divergencies which geographical distance had worked in

the seamless garment of the body of the Church on earth. The nations needed a language and a law whereby they should be made free. It became the occupation of the minds of learned men what that language and that law should be.

Machiavelli and Grotius.—The answer given took two forms. The one came from Italy, and is inherent in the works of Machiavelli (1469–1527)[1] and in the records and State papers of the Italian city states. According to this view, the nation best served its own interests, and conceivably those of humanity, by adopting a policy of enlightened self-interest. The other was the answer of those men who, meditating upon the situation, found abhorrent the thought that States were under no obligation which took account of the common humanity of man. Particularly was this view urged in France at the end of the sixteenth century, where it was, for instance, the theme of a book by a Parisian named Emerich Crucé (1590–1648),[2] who formed a design for an international council to determine disputes between the nations. Sully (1560–1641), the great minister of Henri IV. (1589–1610),[3] incorporated a somewhat similar scheme into the memoirs of his

[1] The standard edition of Machiavelli is that by L. A. Burd (Oxford, at the Clarendon Press), with a learned introduction by the late Lord Acton. Mr. Burd has written a chapter (vol. i. chap. vi.) in the *Cambridge Modern History*, appended to which there is a good bibliography. See also Lord Morley's *Miscellanies*, Fourth Series; Figgis, *From Gerson to Grotius*, p. 62.

[2] Emerich Crucé, *Le Nouveau Cynée* (Balch, Philadelphia). See also Nys, *Les Théories politiques et le droit international en France jusqu'au XVIII^e siècle*. Also my article on Crucé in *The Nineteenth Century and After*, August 1919.

[3] Pfister, *Revue Historique*, 1894; my article in the *Edinburgh Review*, October 1919.

own life, asserting falsely that it had been the policy of his royal master. Others have drawn pictures of similar international Utopias at intervals down to the present day. It was not in sketching out ideal schemes for world organisation, but in the work of thinking out a system of regulation for international affairs upon so practical a basis that logically, in the course of time, world organisation must follow, that Grotius (1583–1645) rightly won the title of the Father of International Law.

CHAPTER III

LEGAL AND POLITICAL DEVELOPMENT (I)

Grotius.—The Thirty Years War was perhaps more brutally waged and more destructive of life than any war till the European War of 1914. Hugo Grotius,[1] who had been born at Delft, in Holland, in 1583, fled to France on the defeat of the Arminian or Burgher Republican party. He had enormous erudition and was a poet, a mathematician, a theologian, a writer on jurisprudence, and an editor of classical texts. The Swedish Government made him its ambassador to the French Court, and in this post he was instrumental in creating the Swedish-French alliance, which turned the course of the Thirty Years War against the Holy Roman Emperor and brought Gustavus Adolphus into Germany. Grotius died three years before the Peace of Westphalia (1648), which ended the Thirty Years War, was signed. Appalled by the savagery of that war's conduct, Grotius set himself to think out the principles upon which laws might be based for mitigating the horrors of hostilities. The application of these principles are given in his book, 'De Jure Pacis et Belli,' which was published in 1625 (the year in which Charles I

[1] Westlake, *Chapters on International Law*, has an admirable account of the life of Grotius.

of England came to the throne), and was dedicated to Louis XIII (1610-1643). As a model for his work there existed certain codes of maritime law which had governed the practice of sailors and merchants in ancient or contemporary traffic in the Mediterranean or other seas.[1] On other than maritime questions the practice of permanently accrediting ambassadors, the rule since the end of the fifteenth century, was beginning to provide in embryo a crystallisation of diplomatic practice. It was not, however, a mere codification (with additions) of existing law, which Grotius gave the world. As the Roman *prætor peregrinus*, in working out to meet the needs of the ancient world a practical system of law, invoked a system of ideal principles of right and wrong, familiar to the stoics, to improve and perfect the code of laws which he administered, so this same ideal eternal justice, the *ius naturæ*, was invoked by Grotius to shape and regulate the code of international practice which was once more to 'make men free' from the worst features of international rivalry in the new order of the world.[2] Thus he worked out a juridical expression for world

[1] *E.g.* the *Consolato del Mare*, a private collection of written custom made at Barcelona, in Spain, in the middle of the fourteenth century; *The Laws of Oleron*, a collection, made in the twelfth century, of decisions given by the maritime court of Oleron, in France; *The Rhodian Laws*, a very ancient collection of maritime laws put together probably between the sixteenth and seventeenth centuries; *The Tabula Amalfitana*, maritime laws of the Italian town Amalfi, dating from the tenth century; *The Leges Wisbuenses*, the maritime laws of Wisby, of the Swedish island Gothland, dating from the fourteenth century.

[2] Bryce, *Studies in History and Jurisprudence*, vol. ii. Essay xi., on the Law of Nature and the significance assigned to it by ancient Roman and modern international lawyers, is well worth reading.

organisation, about which other prophets like Crucé and Sully had but dreamed. In tracing the progressive steps towards some system of world-organisation we can see that the debt owed to both is great, to the more statesmanlike vision as well as to the more poetic. It is not too much to say that upon the work of Grotius the development of international law since then has been built up. The ideals of Sully and Crucé, caught up and repeated by others in the eighteenth and nineteenth centuries,[1] kept alive before men's minds the logical consequences of the system which Grotius elaborated.

The Balance of Power.—The mind of the public and of statesmen was moving towards the idea of world organisation along other lines. There is a significant passage in the instructions of Fénelon (1651–1715) to the young Duke of Burgundy, then heir to the French throne.

'Neighbouring States,' he writes, 'are not only under the obligation of treating each other according to the rules of justice and good faith : they ought also, for their own individual good as well as in the common interest, to form a kind of society, a republic, as it were. It is necessary to realise that in the long run the greater Powers always prevail and overthrow the less, if the latter do not answer back by uniting to form a balancing force. . . . We see that all nations are striving to outdo their neighbours. So each must be perpetually on guard to prevent the excessive aggrandisement of those that surround it. There is nothing morally wrong in this . . . it is, in one word, to work for liberty, peace, and the

[1] See Oppenheim, *International Law*, vol. i. p. 58 ; also Rousseau, *Jugement sur la paix perpétuelle de M. l'Abbé de Saint-Pierre.*

public safety. For the expansion of one nation beyond a certain limit disturbs the balance of the system of which it forms a member. Anything which upsets or disturbs the general system of Europe is dangerous indeed, and drags after it infinite evil.'

In these words the noblest and wisest man of his time describes the force which has been one of the dominating factors in European politics for four hundred years—the principle of the Balance of Power. At first the statesmen of Europe found themselves acting mechanically and unconsciously under the stimulus of this principle. In more modern times the principle was often consciously invoked.[1] In no instance can its operation be studied in a more simple form than in the case of Louis XIV (1643–1715).

Louis XIV entered into full control of his kingdom in his twenty-third year, in 1661. The fifty remaining years of his reign were occupied by wars waged for the aggrandisement of France. In 1667 his attempt to establish French dominance in the Netherlands led to the formation of a triple alliance of resistance to such claims, composed of England, the United Provinces, and Sweden, and to the War of Devolution, ended by the Treaty of Aix-la-Chapelle (1668), a counter-move, concluded by himself with Spain, by which Louis made geographical gains of great importance, but failed in the accomplishment of his extreme desires.

Balked in these by the opposition which seemed

[1] For an example see M. André Tardieu, *La France et les alliances*, as also that distinguished statesman's other books on European diplomacy before the war.

almost mechanically to have arisen in answer to them, Louis succeeded in breaking up the Triple Alliance by the secret Treaty of Dover (1670), made with King Charles II of England, and by an understanding with the Swedish Government. Holland in 1672 was left to bear the brunt, therefore, of a most skilful attack directed by the soldier genius Turenne. Holland itself, and the city of Amsterdam in particular, were saved only by the opening of the sluices and the inundation of the country. When Louis XIV seemed to have all before him the war became general, the Great Elector and the Emperor Leopold taking their stand by Holland's side. After a brilliant campaign in the Rhine Valley Turenne was killed, but the war continued till the signing of a peace at Nymwegen in 1678. By this peace Lous XIV gave back to Holland everything that he had seized, though he obtained some compensation at the expense of Spain.

Such compensation, despite failure in his main attempt, may have drawn Louis XIV on to even more ambitious enterprises. This time he aimed no lower than the imperial dignity, and was prepared, if needs be, to fight all Europe for it. Immediately resistance to Louis XIV stiffened into the League of Augsburg, formed in 1686 by the Emperor, the Kings of Spain and Sweden, the Electors of Saxony, Bavaria, and the Palatinate. The scale was turned by England. Under Charles II that country had been neutral, an attitude even more helpful to King Louis than the too zealously Francophil attitude of James II. By revoking the Edict of Nantes Louis XIV had alienated even those Englishmen who were inclined to apathy. The House of Stuart was

rejected, and William of Orange, arch-enemy of Louis, assumed control in England. Undaunted all the same, the French arms did not flinch before all comers, and though the Irish adventure was defeated at the Boyne (1690), secured a victory at Beachy Head (1690). It was not till the battle of La Hogue (1692) that Louis was brought to realise that he had overreached himself. Then, in 1697, he signed the Treaty of Ryswick, by which he not only relinquished most of his pretensions, but made humiliating acknowledgments as to the legality of William III's and Mary's throne.

In the last phase of his reign, in the twelve years of the War of the Spanish Succession, Louis XIV had abandoned his imperial ambitions and sought only to urge the claims to the Spanish throne of his second grandson, Philip of Anjou. For the fourth and last time the principle of the Balance of Power reasserted itself, and the allies were up in arms to resist the French pretensions. Though at first the latter were successful, the course of the campaign was changed by the appearance of the Duke of Marlborough, and in the Treaty of Utrecht (1713), if Bolingbroke waived some of the fruits of Marlborough's and Eugene's conquests to gain a party victory, the failure of Louis XIV to 'disturb the general system of Europe' by schemes for 'excessive aggrandisement' was once and for all established.

The principle thus vindicated against Louis XIV in the eighteenth century was to find other applications. It was the principle which checked the French revolutionary enthusiasts in an attempt to propagate their wilder doctrines throughout Europe. It sent Napoleon to St. Helena. It thwarted

Metternich when he wished to make a tool of the Holy Alliance to stifle the principle of nationality and freedom. From the immediate point of view of this investigation, it may be said to have a negative as well as a positive aspect. Negatively, by protecting Europe from the dominance of any single Power, it prepared a world arena, in which the interaction of the Nation States found a natural expression in co-operation. In the construction of such co-operation appears the positive aspect of the principle, and this aspect has been summed up in the phrase 'the Concert of the Powers,' which too has had a history of its own.

CHAPTER IV

LEGAL AND POLITICAL DEVELOPMENT (II)

The Concert of the Powers.[1]—After the downfall of Napoleon, just as after the downfall of the German Empire in 1919, the Congress of the Powers, which met to make the peace, did not content itself with pursuing the object for which primarily it had assembled. The Czar Alexander I of Russia (1801–1825) proposed, and the other Powers agreed, to form a *Holy Alliance* (1815), in which, after thanking God for the mercies vouchsafed to them, the signatory monarchs agreed henceforward to regulate their conduct as heads of governments by the principles of the Christian religion, that they would see justice done their subjects, and that they would remain allied for ever, regarding each other as compatriots of the Christian nationality to which they all belonged. From this alliance the British representatives held aloof, partly because in substance and in language it was not calculated to appeal to men like Castlereagh (1769–1822) and Wellington (1769–1852), partly

[1] See Alison Phillips, *The Confederation of Europe* (Longmans, Green & Co.); also his chapter, vol. x. chap. i. of the *Cambridge Modern History* (The Congresses).

C. K. Webster, *The Congress of Vienna* (Oxford, Clarendon Press). See also *Blackwood's Magazine*, March 1919, No. MCCXLI.

because the character of Alexander and his actual behaviour were not above suspicion. Events were soon to show that this attitude was sound. The Holy Alliance, instead of bringing relief to a tired world by acting with mediating efficacy in reconciling conflicting interests and obviating international misunderstanding, degenerated into a junta of despotic monarchs, leagued to give aid to one another against the growing demands of the progressive parties in their States, or the new but widespread stirrings of the nationalistic spirit. Before his death, Castlereagh had regarded its activities with profound misgiving.[1] His successor, Canning (1770–1827), in connection with a barefaced attempt to use the Holy Alliance for the suppression of a political revolt in Spain, laid down the '*doctrine of non-intervention*,' a proclamation to the world of the sacrosanct character of the domestic affairs of every nation. At the same time he opposed to the ambitions of the Holy Alliance in South American affairs the doctrine of James Monroe (President of the United States of America, 1817–1825), by which American disinterestedness in European affairs was asserted and European Powers were warned off transatlantic territory and transatlantic politics.[2]

This first attempt to form a concert of the Powers ended in failure, chiefly owing to the lack of vision,

[1] Lord Salisbury, *Essays on Foreign Policy* (John Murray), Biographical, 'Castlereagh.'

Royal Historical Society Transactions, Third Series, vol. vi. C. K. Webster, 'Some Aspects of Castlereagh's Foreign Policy.'

[2] See Reddaway, *The Monroe Doctrine*; also Pekin, *Les États-Unis et la Doctrine de Monroe*; and Kraus, *Die Monroe Doktrin in ihren Beziehungen zur amerikanischer Diplomatie und zum Völkerrecht.*

perhaps inevitable, among those who were responsible for its inauguration. The future, however, lay with the application of the notion in the practice of diplomacy. Hanging like a pall over the Chancelleries of Europe lay the eternal Eastern Question, the problem of finding a *modus vivendi* between the decaying empire of Turkey and its Christian subjects and the neighbouring States. Alexander I had prevented this question coming up for settlement at the Congress of Vienna, Russian prospects as a residuary legatee upon the death of Turkey being far too good to make the question one which Russian public opinion would wish to have discussed as a problem mutually affecting all the European Powers. As the horizon grew dark with complications all Europe gradually came to the conclusion that the only way out lay in co-operation and in joint discussion.[1] Collective authority in dealing with the disintegration of Turkey has been exercised tentatively since 1826, systematically since 1856, when in the Treaty of Paris, which ended the Crimean War, the signatory European Powers undertook to respect the territorial integrity of the Ottoman Empire, and to consider as a matter of general interest—and of mutual discussion—any act which might infringe it. Since the ratification of this clause, which was repeated in a stronger form in the Treaty of Berlin (1878), the method there laid down has been applied successively to Greece, Egypt, Syria, to the Danubian principalities, and the Balkan peninsula generally, to certain other of the European provinces of Turkey and Russia, and to the treatment of Armenians. It was a method in which the great Lord Salisbury

[1] Holland, *The Congress of the European Powers in the Eastern Question* (Oxford, Clarendon Press).

had especial confidence.[1] It has become almost an instinctive action with Foreign Secretaries to regard it as a panacea, though under the pressure of the grave European situation in 1908 and 1912, Lord Grey of Falloden was unable to employ it in the Bosnia-Herzegovina crisis against Austria, or against Italy in regard to her Tripolitan annexation.[2] Of all the avenues leading to the realisation of a League of Nations, as that term is understood to-day, the employment of the European Concert, sanctioned by the penetrating intellects of Bismarck and Cavour, not to mention others, is not the least important or the least worthy of more study.

Juridical Development.—Further developments of international law kept pace with the more purely organic developments above described. The source of these was the prize court and the judicial bench : the issues were for the most part maritime. For the provocation of such issues the Napoleonic wars provided frequent opportunity. It was the good fortune, not of England only, but of humanity, that at the head of the English prize court there sat for thirty years the famous brother of Lord Eldon, William Scott, afterwards Lord Stowell.[3] His conception of the duty of a prize court is best summed up in his own words :

'The seat of judicial authority is locally here in the belligerent country, according to the known law and practice of nations, but the law itself has no locality. It is the duty

[1] Butler, *The Tory Tradition* (John Murray), 'Lord Salisbury.'

[2] Barclay, *The Turco-Italian War and its Problems* (Constable), chap. ii.

[3] Bantwich in the *Journal of the Society of Comparative Legislation* (New Series, No. XXIII.), November 1910, gives an admirable non-technical account of Lord Stowell's life and work.

of a judge sitting in an Admiralty (prize) court not to deliver occasional and shifting opinions to serve present purposes and particular national interests, but to administer with indifference that justice which the law of nations holds out without distinction to independent States, some happening to be neutral and some belligerent.'

When it is realised that he delivered over two thousand judgments, upon each one of which he lavished jealous care, it can be understood that he left upon the body of international law, which was still very largely viscous in its nature, the stamp of his personality and of the systematisation of his logical processes of thought. The sanity of his judgments, aided by their impartiality, have made them accepted by the world as the foundation upon which other prize court decisions must be built. He gave decisions on the treatment of vessels taken captive, on contraband, blockade, trading with the enemy, and trade domicile in war. Circumstances may have changed, and international agreements since his day have cut down the rights of maritime capture, penalising here as elsewhere the belligerent in favour of the neutral, but the principles which he established have been adopted in all codification of the law attempted since that date, and were the guiding principles of belligerent practice throughout the recent war. When we add to the work accomplished by Lord Stowell the decisions given by other great prize court judges, as, for example, the great American lawyers, Marshall and Story, it is easy to see that men like these, no less than Grotius, have played their part in erecting the fabric of an organisation calculated to obviate the mischiefs of international rivalry.

CHAPTER V

THE LEGISLATIVE PERIOD

Legislative Period.—Up to the present, in tracing the growth of a world organisation, one has seen the historical development of Europe render some fixed international procedure necessary ; one has seen how, impressed by the realisation of this fact, some men have urged forthwith particular forms of international machinery, others have sought to evolve by logical process the principles upon which such machinery should act. One has seen in the *Balance of Power* and the *Concert of the Powers* names for two international forces, evoked by the stress of circumstance, so convincingly final in their ability to meet a need that it appears that the ordinary processes of human development must before long give concrete and written recognition to ideals that had rapidly become a commonplace in the Press as well as in the Chancelleries of modern countries. Before that should finally be so the nations were to experiment once more—this time not so much in the judicial or the political sphere as in what one may term the legislative. In other words, the writer upon International Law before the end of the nineteenth century had primarily to concern himself with precedents drawn from international practice. From the beginning of the twentieth century onwards he began to concern

himself chiefly with the construction and interpretation of a code of law.[1]

On St. Bartholomew's Day, August 24, 1898, Count Mouravieff, the Russian Foreign Minister, addressed letters to the diplomatic corps at St. Petersburg, in which he referred to the desire which the Emperor, his master, had for the 'maintenance of the general peace and a possible reduction of the excessive armaments which were burdening the nations.' These first approaches were not received with any very great enthusiasm, but on January 11, 1899, the Russian Foreign Office sent out another circular, in which it proposed certain definite topics for international discussion. These comprised such subjects as the limitation of armaments, the modification in the direction of increased humanity of the laws of war by sea and land, and the acceptance in principle of the employment of mediation and arbitration by nations impartial on the points at issue, with the object of preventing armed conflict between States: finally, this last point reached, the establishment of a uniform practice in the exercise of such good offices. With the consent of the Dutch Government, the Czar proposed that a meeting to discuss these questions should be immediately summoned at The Hague. The meeting took place on May 20, M. de Staal, the first Russian delegate, presiding over its deliberations. After sitting for two months a report of proceedings was drawn up. It was accompanied by three conventions; also by some declarations, resolutions, and

[1] Higgins, *Hague Peace Conferences* (Cambridge University Press), provides a wealth of information on what I have called the legislative period.

expressions of opinion, of less importance for the present purpose than the three conventions. These latter (as well as some of the former) received solemn ratification by the Governments of all the greater Powers.

The first Hague Conference of 1899 did nothing definite to procure another meeting save that in one of the clauses a wish was expressed that certain matters should be inserted in the programme for a conference in the near future. This conference was proposed by President Roosevelt during the Russo-Japanese War in 1904. The Czar intimated that it was desirable to wait till the war was over, and that he should then summon the second conference himself. To these suggestions the President acceded. The second *Hague Conference* met accordingly June 15, 1907, consisting of fifty-four delegates as opposed to the twenty-six of the first conference. On the paper of agenda the proposals of chief importance concerned the desirability of (*a*) improving the 1899 convention as to the pacific settlement of international disputes, particularly with reference to the court of arbitration and the international committee of inquiry, (*b*) of enlarging the 1899 convention relative to the law and custom of war on land, and (*c*) of elaborating a convention relative to the usages of naval warfare. To obviate the necessity of going into detail, the attached chart, indicating side by side the conventions of the 1899 and the 1907 conferences, will show both the multiplicity of the delegates' activity and the kind of questions about which their debates centred.[1]

[1] I owe to Professor Higgins the idea of the parallel presentation of the various conventions.

The briefest glance at the headings here set out makes it clear that here is a gigantic international act of legislation differing from the treaties that have gone before, such as those which closed the Napoleonic or the Crimean wars, not only in bulk, but in its general intention to bring certainty out of doubt as to correct international practice in a number of directions in which States are perforce brought into friendly as well as hostile contact. Agreements of so wide a scope are naturally enough subjects of contention, and no convention encountered more scepticism, when the British delegates reported home to England, than that, the twelfth, providing for an international prize court. Questions were immediately asked as to the nature of the law that would be administered in it. So much discrepancy between British-American and continental practice in settling maritime questions was known to exist that on February 27, 1908, the British Government addressed a circular to Germany, the United States, Austria, Spain, France, Italy, Japan, the Netherlands, and Russia, suggesting a fresh conference to investigate the law of maritime warfare. The conference met at London, and produced in 1909 the notorious Declaration of London,[1] or codification of the law upon this subject, which takes rank in importance with the 'acta' of the two Hague Conferences. After being much discussed, the Declaration of London was rejected by the House of Lords. Throughout

[1] Bray, *British Rights at Sea*; Bowles, *Sea Law and Sea Power*; Bate, *An Elementary Account of the Declaration of London*; Cohen, 'The Declaration of London,' and the *Quarterly Review*, No. 427, April 1911, may be consulted for varying estimates upon the Declaration of London.

its supporters, including, it has been stated, the Admiralty, showed singular lack of vision by considering the process of blockade chiefly as a weapon to be employed against the British Empire ; as a weapon of offence it was hardly at all considered. The result, however, of rejection by the Upper House enabled the Government at the outbreak of the European War to adopt it as the basis of their practice, making such alterations as prudence at the eleventh hour suggested.

At the signing of the peace the mind of the peoples of all countries was predisposed in a new way to seek peace, ensue it, and ensure it. Their leaders bowed before the general will and, instructed by the experts, found that there was a rich heritage of experience, speculation, and constructive experiment, accumulated since the passing of the Middle Ages, of which the three experiments in legislation above described form the latest and the richest fruit. In evolving a League of Nations scheme they incorporated the ideas of those who had laboured before them, but they were not content with their ideas alone. It is of the essence of the Paris scheme that it is something more.

CHAPTER VI

THE LEAGUE OF NATIONS

The League of Nations.—'Examine the "Treaty of Peace": you will find everywhere throughout its manifold provisions that the framers felt obliged to turn to the League of Nations as the indispensable instrumentality for the maintenance of the new order it has been its purpose to set up in the world of civilised men.' So spoke President Wilson, on July 10, 1919, on his return to the United States, when presenting the Peace Treaty to the Senate for ratification. He was but echoing the words of General Smuts, written in 1918, before the peace delegates had found their way to Paris. 'It is not sufficient for the League to be a sort of *deus ex machina*, called in in very grave emergencies when the spectre of war appears; if it is to last it must be more. It must become part and parcel of the common international life of States, it must be an ever-visible, living, working organ of the polity of civilisation. It must function so strongly in the ordinary peaceful intercourse of States that it becomes irresistible in their disputes; its peace activity must be the foundation and guarantee of its war power.' These two utterances indicate just how the Paris scheme for a League of Nations adds to all previous schemes,

tending in the same direction, an idea which is novel and of high importance. In designing a League with a continuous life, and yet a life dependent always upon the continued assent of the participating nations, the Paris scheme avoids two dangerous extremes. It neither aims at erecting a super-State, reducing the nations of the world to vassal dependencies or component provinces ; nor does it rest content with the alternative open to the world during the epoch of the Hague Conferences and the Hague Tribunal, the erection of an impartial international body to which voluntarily, and in consequence fitfully, the disputants among the nations might resort. At Paris was drawn up, in the words of the illuminating commentary of the Government White Paper, ' a solemn agreement between sovereign (and independent) States, which consent to limit their complete freedom of action on certain points for the greater good of themselves and the world at large.' As many writers have pointed out, there is nothing excessively novel in such action nor derogatory to the dignity of the States themselves. States have limited their power of independent action often-times before : in matters, for example, of securing common postal regulations, or of Red Cross activities, or, to take a greater subject, in their invoking the joint action of the Concert of the Powers, whether with much or with little success is not a question here in point, in matters like the Eastern Question. It is no more derogatory to their sovereign independence so to do than for a Rugby football club to bind its action, permanently in effect, by the regulations of the Rugby Union. Such sacrifice on its part is a necessary condition of each club performing its own functions without producing

chaos in the world of Rugby football, as those who remember the game half a century ago will bear full witness.

The Flexibility of the League's Constitution.—Similar moderation is shown by the framers of the League as regards the actual framework of the League itself. It is a commonplace among students of history and politics that constitutions are either fixed or flexible.[1] They may be of such a nature that at any moment the legislative body or other organ of the Power in question, such is the completeness of its power, can change even the whole constitutional machinery of the nation upside down with the same ease that it can pass a Bank Act or alter the incidence of national taxation. Such a constitution is that of Great Britain, where, the King, Lords, and Commons jointly consenting, there is no part of the machinery of government that might not be altered. Countries with a fixed constitution, on the other hand, have removed their machinery of government outside the operation of ordinary legislative or executive enactments. Thus the Canadian Parliament cannot, theoretically at least, without the consent of the Imperial Parliament, alter the constitution which Canada adopted at the time of confederation. The American Congress cannot alter the constitution of the United States. It needs special machinery and special processes to do so. It sometimes happens that communities have the choice as to which type of constitution they prefer. A fixed constitution gives, up to a point, stability, certainty, safeguards against the monopolising by any one group of the

[1] See Bryce, *Studies in History and Jurisprudence*, vol. i. Essay iii. Dicey, *Law of the Constitution*, 'The Sovereignty of Parliament.'

resources and the policy of the community—all boons appreciated by men with a stake in the common stock and common fortune of the country, whether under a professedly democratic form of government or not. By analogy there was much to say against a flexible form of constitution for a League of Nations composed of forty-five communities, separated by such vast distances that indirect representation in the common councils had to be applied in a form that strains that theory of democratic government almost to the breaking-point. But in erecting a permanent international authority out of the delegation of certain powers by the participating States, the framers of the Paris scheme made no attempt to fix upon succeeding generations a cast-iron system. 'Recognising,' they write, 'that one generation cannot hope to bind its successors by written words, the Commission has worked throughout on the assumption that the League must continue to depend on the free consent, in the last resort, of its component States . . . If the nations of the future are in the main selfish, grasping, and warlike, no instrument or machinery will restrain them. It is only possible to establish an organisation which will make co-operation easy, and hence customary, and to trust in the influence of custom to mould opinion.' In concrete form this attitude finds its expression in articles providing alike for withdrawal from the League and for the amending by constitutional methods of its provisions (Articles I and XXVI).

This breadth of attitude upon the framers' part answers another objection that has sometimes been brought against the Paris scheme. It is pointed out that, whatever may be their intention, they have in

fact gone far to fix the limits of each nation and to make perpetual the present geographical division of the world. To say so is unjust. What has been done is to provide that when a change is necessary it shall be after discussion and debate, not by means of war and violence. Moreover, to avoid the charge that the League is the fruit of interested parties, anxious to consecrate the status of the moment, the membership has been extended to the widest limit, including even a repentant Germany, when that is proved to have existence. Thus constituted, no nation can feel itself unrepresented. For the rest, those who have confidence in the enduring powers of the League rely upon the educative effect of the 'New Order' of international relations. It is significant, of course, to notice that a specific condemnation of the later activities of the Holy Alliance is inserted in the treaty by a clause which, through a guarantee to countries against aggression from without, asserts, by implication, the sanctity of domestic national affairs (Article X).

The Mandatory System.—The collapse of the Central Powers and Russia, together with the strain placed upon other countries, belligerent and neutral, throughout the war led in 1919 to something like a European *débâcle*. Sections of the old empires and kingdoms had shot off from the old organism and floated pilotless, held together only, and perhaps temporarily, by intensity of racial feeling, itself, if undisciplined, no very desirable factor in the European situation. Among these sections of the defeated empires many different types existed: there were Armenia, Syria, Palestine, Mesopotamia, German South-West Africa, the islands of the South Pacific,

for example.[1] Were all these to be regarded as booty for the victors, to be the objects of a scramble now and a constant cause for wrangle through the ages in addition? In answer to this question, the framers of the League were determined to invite the Powers to subscribe to the following three principles :

(1) That these territories should not be annexed by any single Power.

(2) That any authority, control, or administration which should be necessary in respect of these territories and peoples, other than their own, should be the exclusive function of, and should be vested in, the League of Nations and exercised by or on behalf of it.

As General Smuts, however, pointed out in his famous pamphlet, administration of a country conducted jointly by the Powers had not infrequently been tried in history, had usually been found wanting, and had very seldom endured more than the briefest length of time. The history of modern Egypt, for instance, provides examples of something so close to such an undertaking as to suggest the gravest warning as to its advisability. The way out of the dilemma was found in what is called the *Mandatory System*, and led to a third recommendation to put beside the other two :

(3) That it should be lawful for the League of Nations to delegate its authority, control,

[1] See Ralph Butler, *The New Eastern Europe* (Longmans, Green & Co.); also Sir Sydney Olivier, *The League of Nations and Primitive Peoples* (Oxford University Press); also General Smuts' pamphlet, *passim*.

> or administration in respect of any people or territory to some one State whom it may appoint as its agent or mandatory, upon conditions which it shall originally lay down, for the fulfilment of which it shall continually remain responsible, and which, in case of need, it shall be at liberty to change.

It is apparent at the most cursory inspection of these suggestions that the mandatory theory by its elasticity was well calculated to meet the divergency of the situations with which the Powers were confronted. To a thoughtful student of the centuries-old growth of the British Empire, or the 'twenty-one years' history' of the world policy of the United States, it must appeal both as an arresting thought and as a device which it would be criminal not to put to the experiment. To the Briton, or man from the Dominions, of strong imperial views, as also to the citizen of the United States, it would seem but concrete recognition of a commonplace of our imperial doctrine, in that it took from us the theory that our power was but a trust administered in the interests of those we have been called to rule, and in the interests of all that makes for progress in the world. It was again and again asserted by Lord Cromer, who knew, as few men know, that region where colonial government abuts on foreign policy, that the reason why the British Empire proved so little irksome to the other nations of the world, and provoked so little practical obstruction, lay, and lay only, in the fact that, despite our obvious shortcomings, the verdict of history did in fact acknowledge that we approached colonial questions in the spirit

of men administering a trust.[1] The framers of the Paris scheme may have evolved a new name for an old condition, and if their work has been well wrought and proves enduring, is it fanciful to class with them in merit the thousands of the administrators through our Empire and the colonial dependencies of the United States, whose lifework, most often unrequited, has shown that the mandatory theory of colonial administration has already proved itself a not unfulfilled ideal?

[1] I am pleased to notice that this opinion concerning Lord Cromer, which was written before they appeared, is emphasised by an admirable series of articles on the Egyptian situation which have during August and September 1919 been appearing in *The Times*.

CHAPTER VII

THE LEAGUE'S MACHINERY

The Machinery of the League.—The organs of the League are four in number : (1) The Assembly ; (2) the Council ; (3) the Secretariat-General ; (4) the Permanent Court of Justice.

(1) *The Assembly* consists of representatives of all States which are members of the League. These representatives need not be official spokesmen of their Government. There seems to be no question affecting the existence or organisation of the League itself which it is not within its competence to consider and decide. It may at any time advise the reconsideration by members of the League of treaties which have become inapplicable, and the consideration of international conditions, the continuance of which might endanger the peace of the world (Article XIX). This defines its position in a way that should extend its powers considerably beyond those ever claimed for a Hague Conference, which was more in the position of a body called to debate certain branches of international law at the suggestion of one or more of the European or American Foreign Offices. It is also charged with confirming the appointment of the Secretary-General and with the admission of new members to the League—

this last by a two-thirds majority. It may also at its meetings deal with any matter within the sphere of action of the League or affecting the peace of the world, thus perhaps forming the vehicle through which the Governments of the Powers will give consent to alterations in international law, and to the many conventions for joint international action that are sure to be required. It does not appear that its decisions will have to be ratified by or submitted to the Council, the framers of the Paris scheme preferring to leave vague the relation between the Assembly and the Council, a gap which conventional practice will in time fill up, but which perhaps savours a little too much of certain British, American, and Canadian Civil Service war improvisations. On the other hand, it must be remembered that with the exception as to the admission of a new member of the League, and as to the passing of certain alterations in the constitution, and as to certain arbitral reports made by the Assembly on questions referred to it for examination, its action in all cases is bound to be unanimous.

The Assembly is the supreme organ of the League, but it is a body of nearly 150 members, whose decisions to be valid require the unanimous consent of nearly fifty States. A much smaller body is required for the ordinary practices of international co-operation, still more for dealing with emergencies. This is provided in

(2) *The Council*, which is the central organ of the League, and is endowed with large powers. The unwieldiness of the Assembly is avoided by making this a body composed of the political chiefs of al the Great Powers, and of four other Powers selected

at intervals by the Assembly. In this one authority has seen the utilisation of the idea which lay behind the Concert of the Powers; to others it will seem that the framers of the scheme have had in mind the meetings of the British War Cabinet during Mr. Lloyd George's administration.[1] Like this, the Council was called into being as a small body from within a larger, and, like this, it will have the expanding capacity which enables it to call to its councils the parties interested in a specific question under discussion. Like the Assembly, it can consider any matter within the sphere of action of the League or affecting the world's peace; and as in the case of the Assembly, its decisions, except in the case of certain specified exceptions, must be unanimous, there being, in the opinion of its creators, 'little practical advantage, and a good deal of danger, in allowing the majority of the Council to vote down one of the great Powers.' Of its other functions those most important are:

(*a*) To formulate plans for the limitation of national armaments, and to advise how best to prevent the evil effects attendant upon the private manufacture of arms and munitions.

(*b*) To advise upon means whereby 'the territorial integrity and existing political independence' of all member States may best be preserved against external aggression.

(*c*) To deal with international disputes submitted to it, and make recommendations within six months, and also to propose means of giving effect to the decision of any Arbitral

[1] See the first report of the British War Cabinet, 1917.

Court the award of which is not being carried out.

(*d*) To be the authority for the settlement of such disputes between member States as are not referred to arbitration.

(*e*) To recommend what share each member State shall contribute to the armed force to be used by the League against any member who breaks or disregards its covenants for peaceful settlement of disputes with other members.

In the words, however, of the White Paper commentary, 'there is real advance of immense importance in international relations in the mere fact that the national leaders of the British Empire, the United States, France, Italy, and Japan, each in touch with the political situation in his country, are to meet together once a year, at least, in personal contact for an exchange of views.' It may be added that there is provision, with safeguards, for admission to the Council of Germany and her allies, and of a Russia restored to corporate international activities.'

(3) *The Secretariat-General*, or permanent international Civil Service, will, if it can get cohesion and an international moral without sacrificing contact with reality, play a big part by substituting for the paper proposals of the scheme an organisation working with a healthy and normal activity. 'The duty of the Secretariat-General is to keep all records, procure information, and communicate with all parties to cases ; also to publish every treaty or international agreement entered hereafter into by any member of the League, no such treaty or engagement to be valid till so published.

(4) *The Permanent Court of Justice* will act both as a bench of judges to answer points of law submitted to it by the Assembly or the Council, and as a court competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Council is charged with the formulation of a scheme for the establishment of such a court. How far this will be amalgamated with the Hague International Tribunal, how far it will confine itself to being a court of law, and not of arbitration, and how far it will take the place of the proposed but never realised International Prize Court of the second Hague Conference is not apparent. These questions are probably left for the Council to determine. Sentences in the White Paper commentary indicate that the framers of the scheme wished to emphasise the legal as opposed to the political nature of the court.[1]

The Prevention of War.—It must be, however, by its ability to prevent war that the efficacy of the Paris scheme will be finally judged. Rightly this has formed the main idea of the object of the League in the mind of the ordinary man, to whom the excursions of the League into the sphere of controversial labour questions and the like (Article XXIII) are regarded as a somewhat dangerous experiment. The White Paper commentary gives seven independent headings under which the efforts of the League's constructors can be grouped.

(1) *Limitation of Armaments.*—The members of

[1] The whole question of an International Court of Justice is well discussed by Oppenheim, *International Law*, vol. i. (2nd edition), pp. 522 ff., though I do not share his view as to the desirability of an International Prize Court.

the League bind themselves to recognise that the maintenance of peace is bound up with the reduction of armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations. The Council is charged with formulating for every Government a scheme by which such a principle can in each case be carried out. This proposal must be considered by the nation affected, and, if accepted, the quota allowed it must never be exceeded. On the other hand, every ten years the matter must come up for fresh discussion. In the same way the Council must deal with the desirable course of abolishing the private manufacture of munitions. To facilitate the action of the Council in these undertakings, the Governments undertake to interchange full and frank information.

(2) *A Mutual Guarantee of Territory and Independence.*—On the one side the United States was loath to be bound down to the famous Article X, which asserts this territorial guarantee and charges the Council with seeing that it is carried out. On the other hand, nations, whose proximity to the Central Powers has taught them 'too late that men betray,' naturally made their entry into a League of Nations conditional upon such general guarantee as a substitute for the armaments and reassuring alliances upon which they would otherwise be trusting. Without a doubt this forms a difficult and crucial condition of the League of Nations. See, however, above, p. 32. The territorial integrity or the independence of any member of the League being violated, it would appear that the aggrieved party would bring the matter at once before the League,

though any third party is at liberty to do so. (The aggressor would then be bound to put his case before the Council, and both parties would be bound to refrain from war until three months after the award by arbitrators or the report of the Council.) (If either party did not so wait, the ban of the League could be called down upon it, and all members would be compelled to sever relations with it. If, on the contrary, the arbitration, when given, showed unanimity among all the members of the Council, with or without a majority of the Assembly, according as the Assembly had or had not been called in as additional arbitrators (the parties to the dispute not being reckoned as members of the one or the other body for this purpose), and if the arbitration were not then accepted, the recalcitrant State would have committed an act of war against the League by proceeding to go to war against any one of the League's members. If it merely neglected to conform with the decision, not actually making war at the same time, it would fall into the mercy of the Council, which is charged with determining on the course to be adopted by the League.[1]

Here there would seem to be a difficulty. Modern democracies are not easily worked up to the point of hostilities, particularly when the issue at stake is remote and to the public unfamiliar. Again, the

[1] It seems convenient to describe here the ordinary procedure of international arbitration cases, the promulgation of the sentence, and its reception by the parties interested, because the importance of this most disputed of all articles (Article X, establishing a territorial guarantee) indicates the desirability of as exhaustive a discussion as possible. The reader will realise that the same procedure and conditions attending judgment would hold good whatever the matter arbitrated upon.

incidence of the burden of declaring and conducting war is not uniform. For Holland in 1916 to have declared war on Germany, its powerful next-door neighbour, would have had more immediate and crushing effect upon its national life than a declaration of war on Germany in 1916 by the Argentine or the United States would have had on the national life of those countries. As the constitution of the League now stands, the Council, when either of the three cases above indicated arises between it and a recalcitrant member, may find great apathy upon the part of democracies, not intimately affected by the question, in taking up with force the Council's side, whatever the said democracy's representative in the Council might have promised. To execute the sentence the Council might, of course, make mandatories from among the Powers, which appreciated the issue, but as all the nations will have by then given the recalcitrant Power good cause for war, the execution cannot be so restrained to one or two among them. The only way out seems to be in postulating of the 'new order' a desire to avoid and not provoke disputes, and in a thorough ventilation by all means known to experts in publicity of the points at issue, the attitude assumed by all parties during arbitration, and the amount of force which can in the end be brought to bear upon recalcitrancy. The student of the Paris scheme will be blind if he ignores such difficulties. Experience of arbitration in our domestic affairs gives hope that a vigorous executive handling of awkward situations may render them not insuperable. They may work out, as the White Paper commentary suggests, in a number of supplementary defensive alliances, a solution indicated

by the Franco-British-American proposed treaty. In some cases, however, one must admit the difference between defensive and offensive alliances is a thin one.

(3) *An admission that any circumstance which threatens international peace is of international interest.*

(4) *An agreement not to go to war till a peaceful settlement of a dispute has been tried.* See below, p. 45.

(5) *Machinery for securing peaceful settlements with provision for publicity.*[1]

Here it is important to realise the difference between matters justiciable and non-justiciable. It is obvious that certain disputes between nations involve legal questions, the interpretation of treaties, or the bringing of old-established practices of international law into harmony with modern needs and new conditions. Such a dispute was the North Atlantic Fisheries dispute, involving, among other points, the interpretation of a century-old treaty.[2] Other disputes touch not law, but policy. The behaviour of Germany in the Agadir crises [3] was both illegal and destructive of the public peace ; but when Germany [4] adopted Nietzschean ethics in its conduct

[1] It is particularly encouraging to realise that the use of publicity in international affairs at last seems realised. It is a subject upon which much might be written. Much is suggested by my friend M. Stéphane Lauzanne's able book on de Blowitz and by Barrett-Lennard and Hoper's study, *Bismarck's Pen*. See also Busch, *Bismarck : Some Secret Pages of his History*, passim.

[2] Sir Erle Richards, 'North Atlantic Fisheries Dispute,' *Journal of the Society of Comparative Legislation*, November 1910.

[3] Tardieu, *Le Mystère d'Agadir*.

[4] H. W. C. Davis, *The Political Thought of Heinrich von Treitschke* (Constable), is a book which suggests several forms of action upon the part of States which it is difficult to class as justiciable.

during the years before the war, it is not always easy to declare its conduct actually illegal. The Hague Tribunal has always acted as a court administering both law and disinterested counsel, based on common sense and a desire for amicable settlement. If the new Permanent Court of Justice confines itself to giving legal judgments, based on the large and ever-growing body of international law, and, considering that the enthronement of law, the only alternative to war in the long run, badly needs the continuous development of such a tradition of jurisprudence, it may be thought wiser that it should, then many cases which may arise can never be settled by this Court. The framers of the Paris scheme, realising this, provided several alternative methods of settling or adjudicating upon disputes. The commentary in the White Paper gives these five alternatives :

(*a*) The Council may keep the matter in its own hands, as it is certain to do with any essentially political question in which a powerful State feels itself closely interested.

(*b*) It can submit any dispute of a legal nature for the opinion of the Permanent Court, though in this case the finding of the Court will have no force till endorsed by the Council.

(*c*) While keeping the matter in its own hands it can refer single points to the Permanent Court for judicial decision.

(*d*) There is nothing to prevent the Council from referring any matter to a committee, or to prevent such a committee from being a permanent body. An opening is left, therefore, for the reference of suitable issues to such non-political bodies as the 'Commission of Conciliation,' which are desired in many quarters. The reports of such committees would, of course, require the approval of the Council to give them authority, but the Paris scheme leaves wide room for development in this direction.

(*e*) The Council may refer the dispute to the Assembly. The procedure suggested under (*b*), (*c*), and (*d*) will then be open to the Assembly.

As to the reception of awards made by any of these means, see pp. 41, 42, the processes in question referring not only to disputes over territorial integrity.

(6) *The 'sanctions'* (punishments upon pain of which acquiescence is assured) *to be employed to punish a breach of the agreement not to go to war till a peaceful settlement of a dispute has been tried.*— See above pp. 41–44. It will be noticed that these punishments (the severance of relations with a recalcitrant State, financial, commercial, and political) only come into force mechanically in the case of a Power going to war without submitting the dispute for arbitration, or of going to war in the face of testimony through arbitration, that it does so with unanimous opinion against it in the matter of dispute. A Power's refusal to accept the award of arbitration, unaggravated by recourse to war, leaves the determination of the next step in the power of the Council. Often, of course, this step would be taken in the same direction.

(7) *Similar provisions for settling disputes where States not members of the League are concerned.*— These follow in the main the ideas suggested for the arbitration of ordinary disputes, but leave a greater width of discretion in the hands of the Council.

These are the chief features of the League of Nations, in which the efforts of many generations have found an issue. One thing alone is certain— that the scheme will fail unless mankind realises that it does provide a way out of war, and that war wastes alike the capital of vanquished and of victors.

This scheme differs from all its predecessors in that it does not erect a cast-iron machine for settling the quarrels of the nations. It is more human and more sensitive than that. It would be truer to say that one can look away from the actual machinery, which it happens to necessitate, and can think of it as a reduction to logical form on paper of the thought of men who have that which in great diplomats is half-instinctive, the power of foreseeing trouble, and, in the strength of that knowledge and their knowledge of the world, so shifting the 'points' that the trouble is side-tracked. Certainly there never was a time so auspicious as the present for its introduction. Bitterly the great mass of men have learned the waste of war, and victory, hailed with gratitude such as the world has never seen, has none of the tawdry splendour for the Allied victors which it held for the one side in the last great European war. The great mass of the suffering people of all types and classes feel, rightly or wrongly, that their foreign statesmen failed them. Some are turning and in their ignorance reaching out from sheer despair to the frenzied remedies of the 'international,' or worse. There is a chance that the mass of men may rally to a constructive Internationalism which preserves and not destroys the tradition of the nation State. It is wise neither to talk, nor to pitch our hopes, too high. The new diplomacy is bounded with the same limits as the old. At its best it gives embodiment, more consonant with the habit of men's thoughts to-day, to the principles and the ideals that inspired the old diplomacy at its best period. The men who will serve the new diplomacy are certainly not wiser than the men who served the old; they certainly have less experience of international affairs. No

tradition of diplomacy, neither old nor new, can be effective in a major sense. Capitalistic greed and mob ignorance have at times informed the foreign policy of States ever since man gave way to his gregarious instinct. The old Chancelleries were, in the last resort, the servants of the State, alike in monarchies and in republics. The Geneva delegates will find themselves the same. They will only have rather better instruments to work with.

To sum up in a sentence the chief effect of the Paris scheme when ratified, the nations have pledged themselves not to go to war without waiting for reason to have its chance. A nation cannot reach the benefits of such a scheme as this if it takes up also the doctrine of aloofness in international affairs. Because the framers of the Paris scheme show in almost every clause that they know its limitations, it is the part of wise men to rally to their handiwork.

TEXT OF THE LEAGUE, WITH NOTES AND THE OFFICIAL COMMENTARY

THE COVENANT OF THE LEAGUE OF NATIONS, WITH A COMMENTARY THEREON

Presented to Parliament by Command of His Majesty. June 1919[1]

NOTE.

The Covenant of the League of Nations forms Part I of the Draft Treaties of Peace presented to the Delegates of the German Empire at Versailles on May 7,[2] and to those of Austria at Saint Germain on June 2, 1919. It is provided that these Treaties shall come into force as soon as they have been ratified by Germany and Austria respectively, and by three of the Principal Allied and Associated Powers. The Principal Allied and Associated Powers comprise the United States of America, the British Empire, France, Italy, and Japan.

---

[1] My gratitude is due to H.M. Stationery Office for permission to reproduce this paper. I am desired to point out that the version here printed, though, I believe, exact, does not purport to be printed by authority.

[2] The German delegates eventually signed Saturday, June 28, 1919.

THE COVENANT OF THE LEAGUE OF NATIONS

THE High Contracting Parties, in order to promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just, and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another, agree to this Covenant of the League of Nations.

ARTICLE I.

The original Members of the League shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

Any fully self-governing State, Dominion, or Colony not named in the Annex, may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval, and air forces and armaments.[1]

[1] It is difficult to exaggerate the importance of this clause in the Paris scheme. It is arguable that it is its most significant single measure. By it the British Dominions have their independent nationhood established. There may be friction over small matters in giving effect to this internationally acknowledged fact, but the

Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

Article II.

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

Article III.

The Assembly shall consist of Representatives of the Members of the League.

The Assembly shall meet at stated intervals and from time to time as occasion may require, at the Seat of the League or at such other place as may be decided upon.

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

At meetings of the Assembly each Member of the League shall have one vote, and may not have more than three Representatives.

Article IV.

The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives

Dominions will always look to the League of Nations Covenant alike as their Declaration of Independence and their Treaty of Versailles. That the change has come silently about, and has been welcomed in all quarters through the British Empire, is a final vindication of men like the United Empire loyalists.

The effective guarantees necessary are not a mere figure of speech. China, which has been ready to join international agreements so far as naval warfare is concerned, has never joined such agreements as regards land warfare. A Chinese Government can postulate a control over its maritime forces which it can, or could, never be sure of with regard to its armies and their possible leaders.

of four other Members of the League [1] These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Greece, and Spain shall be members of the Council.

With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.[2]

The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.[3]

At meetings of the Council each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

[1] The second Hague Conference proved so unwieldy that in the Conference of London, which drew up the Declaration of London, only the greater naval Powers were summoned (see above, p. 26). The varying composition of the Assembly and the Council is an attempt to gain the advantages of both the more and less embracing representation.

[2] It is through the machinery provided in this clause that the members of the late hostile alliance may hope to regain their position among the family of nations.

[3] Here there is probably a conscious imitation of the practice of Mr. Lloyd George's War Cabinet during the war. The Cabinet, it is said, when about to make an inter-departmental decision, would summon to its meetings representatives of all the departments concerned.

Article V.

Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of committees to investigate particular matters, shall be regulated by the Assembly or by the Council, and may be decided by a majority of the Members of the League represented at the meeting.

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

Article VI.

The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

The first Secretary-General shall be the person named in the Annex ; [1] thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

[1] Sir Eric Drummond, who is a member of a prominent Roman Catholic family, was educated at Eton. Entering the Foreign Office, he was successively private secretary to Mr. Asquith as Prime Minister, and to Lord Grey and Mr. Balfour as Foreign Secretaries. He accompanied Mr. Balfour on his American visit in 1917.

Article VII.

The Seat of the League is established at Geneva.

The Council may at any time decide that the Seat of the League shall be established elsewhere.

All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.[1]

The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

Article VIII.

The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

[1] 'While resident at foreign courts diplomatic ministers are exempt in a very great degree from the operation of the local law. Their persons are inviolable, unless they are actually plotting against the security of the State to which they are accredited, in which case they may be arrested and sent out of the country. They are free from legal processes directed against the person, unless they voluntarily consent to waive their privilege and appear in court. Their wives, families, and servants share their immunities to a very considerable, but ill-defined, extent. Their property, too, has many immunities, especially the official residence. For most purposes it is under the jurisdiction of the State which the Embassy represents, and except in extreme cases it may not be entered by the local authorities.'—T. J. Lawrence, *A Handbook of Public International Law*, p. 82.

Such plans shall be subject to reconsideration and revision at least every ten years.

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval, and air programmes, and the condition of such of their industries as are adaptable to war-like purposes.

Article IX.

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles I and VIII, and on military, naval, and air questions generally.

Article X.

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

Article XI.

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual

to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.[1]

Article XII.

The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.[2]

In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

Article XIII.

The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.

[1] This international sanction for, and encouragement of, the 'candid friend' is not without its importance. A similar provision in the first Hague Peace Conference's Acta enabled President Roosevelt to hasten peace between Russia and Japan.

[2] Neglect of this—*i.e.* indulgence in hostilities without waiting for arbitration or inquiry—is the only international crime bringing immediate outlawry by the mechanical severance of relations between the guilty party and all the remaining Powers. See p. 48. It is accordingly the kernel of this whole agreement.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award that may be rendered and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto.

Article XIV.

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.[1]

Article XV.

If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration as above, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate

[1] See above, pp. 40, 45.

to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council, either unanimously or by a majority vote, shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one or them, and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this Article and of Article XII relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

Article XVI.

Should any Member of the League resort to war in disregard of its covenants under Articles XII, XIII, or XV, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League,[1] which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval, or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will

[1] See above, p. 48, 56*n*.

take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

Article XVII.

In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted the provisions of Articles XII to XVI inclusive shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article XVI shall be applicable as against the State taking such action.

If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

Article XVIII.

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible

be published by it. No such treaty or international engagement shall be binding until so registered.[1]

Article XIX.

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.[2]

Article XX.

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.[3]

Article XXI.

Nothing in this Covenant shall be deemed to affect the validity of international engagements such as treaties of

[1] This clause is aimed at securing so-called 'open diplomacy.' It was the custom before the war for Governments to accompany treaties concluded by them and actually published, with secret understandings which did not see the light of day. This will henceforward be impossible. The famous and much-abused treaties made during the War with Italy by France and England hardly come under this heading. They were not secret clauses additional to some published treaty. The conditions of war made it impossible to publish any agreements of whatever nature concluded between the Allies. In so far, however, as these treaties are inconsistent with the present League, they would appear to be abrogated under Article XX. It has been promised that the recent Anglo-Persian Treaty will be submitted to the League.

[2] See p. 44. [3] See note 1.

arbitration or regional understandings like the Monroe Doctrine for securing the maintenance of peace.[1]

Article XXII.

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience, or their geographical position, can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions, and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at

[1] Article XXI was aimed at reassuring American sensitiveness with regard to the inviolability of their Monroe Doctrine (see p. 19), and of their 'gentleman's agreement' with Japan as to immigration of yellow labour into the Pacific States, upon the inviolability of which Californian opinion will insist.

such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience or religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.[1]

Article XXIII.

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League—

(*a*) will endeavour to secure and maintain fair and humane

[1] See pp. 32–35.

conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations;

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control;

(*c*) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;

(*d*) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914–1918 shall be borne in mind;

(*f*) will endeavour to take steps in matters of international concern for the prevention and control of disease.

Article XXIV.

There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant

information and shall render any other assistance which may be necessary or desirable.[1]

The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

Article XXV.

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes the improvement of health, the prevention of disease, and the mitigation of suffering throughout the world.

Article XXVI.

Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

[1] As an example of the international bureaux and commissions referred to, one might instance the Suez Canal Commission, which was set up by Article 8 of the Treaty of Constantinople of 1888. One may quote also the Danube and Congo Navigation Commissions, three commissions in the interest of health whose sphere of operations are, respectively, the lower part of the Danube, Constantinople, and Alexandria, and, finally, the permanent international commission at Brussels concerning sugar.

As instances of matters with international interest, but subjected to no permanent international machinery, one might quote the subject of international telegraphy, postal service, customs and tariffs, transports, &c., all of which have been the subject of regulation by general conventions between a greater or less number of the Powers.

ANNEX TO THE COVENANT

1. Original Members of the League of Nations

Signatories of the Treaty of Peace

United States of America.
Belgium.
Bolivia.
Brazil.
British Empire.
  Canada.
  Australia.
  South Africa.
  New Zealand.
  India.
China.
Cuba.
Czecho-Slovakia.
Ecuador.
France.
Greece.
Guatemala.
Haiti.
Hedjaz.
Honduras.
Italy.
Japan.
Liberia.
Nicaragua.
Panama.
Peru.
Poland.
Portugal.
Rumania.
Serb-Croat-Slovene State.
Siam.
Uruguay.

States Invited to Accede to the Covenant

Argentine Republic.
Chile.
Colombia.
Denmark.
Netherlands.
Norway.
Paraguay.
Persia.
Salvador.
Spain.
Sweden.
Switzerland.
Venezuela.

2. First Secretary-General of the League of Nations

The Hon. Sir James Eric Drummond, K.C.M.G., C.B.

COMMENTARY ON THE LEAGUE OF NATIONS COVENANT

THE first draft of the Covenant of the League of Nations was published on February 14, 1919; in the weeks following its publication the League of Nations Commission had the benefit of an exchange of views with the representatives of thirteen neutral Governments, and also of much criticism on both sides of the Atlantic. The Covenant was subjected to careful re-examination, and a large number of amendments were adopted. In its revised form it was unanimously accepted by the representatives of the Allied and Associated Powers in Plenary Conference at Paris on April 28, 1919.

The document that has emerged from these discussions is not the Constitution of a super-State, but, as its title explains, a solemn agreement between sovereign States, which consent to limit their complete freedom of action on certain points for the greater good of themselves and the world at large. Recognising that one generation cannot hope to bind its successors by written words, the Commission has worked throughout on the assumption that the League must continue to depend on the free consent, in the last resort, of its component States; this assumption is evident in nearly every article of the Covenant, of which the ultimate and most effective sanction must be the public opinion of the civilised world. If the nations of the future are in the main selfish, grasping, and warlike, no instrument or machinery will restrain them. It is only possible to establish an organisation which may make peaceful co-operation easy and hence customary, and to trust in the influence of custom to mould opinion.

But while acceptance of the political facts of the present has been one of the principles on which the Commission has worked, it has sought to create a framework which should make possible and encourage an indefinite development in accordance with the ideas of the future. If it has been chary

of prescribing what the League shall do, it has been no less chary of prescribing what it shall not do. A number of amendments laying down the methods by which the League should work, or the action it should take in certain events, and tending to greater precision generally, have been deliberately rejected, not because the Commission was not in sympathy with the proposals, but because it was thought better to leave the hands of the statesmen of the future as free as possible, and to allow the League, as a living organism, to discover its own best lines of development.

The Members of the League

Article I contains the conditions governing admission to the League, and withdrawal from it. On the understanding that the Covenant is to form part of the Treaty of Peace, the article has been so worded as to enable the enemy Powers to agree to the constitution of the League, without at once becoming members of it. It is hoped that the original Members of the League will consist of the thirty-two Allied and Associated Powers signatories of the Treaty of Peace, and of thirteen neutral States.

It is to be noted that original Members must join without reservation, and must therefore all accept the same obligations.

The last paragraph is an important affirmation of the principle of national sovereignty, while providing that no State shall be able to withdraw simply in order to escape the consequences of having violated its engagements. It is believed that the concession of the right of withdrawal will, in fact, remove all likelihood of a wish for it, by freeing States from any sense of constraint, and so tending to their more whole-hearted acceptance of membership.

The Organs of the League

Articles II–VII describe the constitutional organs of the League.

The Assembly, which will consist of the official representatives of all the Members of the League, including the

British Dominions and India, is the Conference of States provided for in nearly all schemes of international organisation, whether or not these also include a body of popular representatives. It is left to the several States to decide how their respective delegations shall be composed; the members need not all be spokesmen of their Governments.

The Assembly is competent to discuss all matters concerning the League, and it is presumably through the Assembly that the assent of the Governments of the world will be given to alterations and improvements in international law (see Article XIX), and to the many conventions that will be required for joint international action.

Its special functions include the selection of the four minor Powers to be temporarily represented on the Council, the approval of the appointment of the Secretary-General, and the admission (by a two-thirds majority) of new members.

Decisions of the Assembly, except in certain specified cases, must be unanimous. At the present stage of national feeling, sovereign States will not consent to be bound by legislation voted by a majority, even an overwhelming majority, of their fellows. But if their sovereignty is respected in theory, it is unlikely that they will permanently withstand a strong consensus of opinion, except in matters which they consider vital.

The Assembly is the supreme organ of the League of Nations, but a body of nearly 150 members, whose decisions require the unanimous consent of some 50 States, is plainly not a practical one for the ordinary purposes of international co-operation, and still less for dealing with emergencies. A much smaller body is required, and, if it is to exercise real authority it must be one which represents the actual distribution of the organised political power of the world.

Such a body is found in the Council, the central organ of the League, and a political instrument endowed with greater authority than any the world has hitherto seen. In form its decisions are only recommendations, but when those who recommend include the political chiefs of all the Great Powers and of four other Powers selected by the States of the world

in assembly, their unanimous recommendations are likely to be irresistible.

The mere fact that these national leaders, in touch with the political situation in their respective countries, are to meet once a year, at least, in personal contact for an exchange of views, is a real advance of immense importance in international relations. Moreover, there is nothing in the Covenant to prevent their places being taken, in the intervals between the regular meetings, by representatives permanently resident at the Seat of the League, who would tend to create a common point of view, and could consult and act together in an emergency. The pressure of important matters requiring decision is likely to make some such permanent body necessary, for the next few years at least.

The fact that for the decisions of the Council, as of the Assembly, unanimity is ordinarily required, is not likely to be a serious obstacle in practice. Granted the desire to agree, which the conception of the League demands, it is believed that agreement will be reached, or at least that the minority will acquiesce. There would be little practical advantage, and a good deal of danger, in allowing the majority of the Council to vote down one of the Great Powers. An important exception to the rule of unanimity is made by the clause in Article XV providing that, in the case of disputes submitted to the Council, the consent of the parties is not required to make its recommendations valid.

The second paragraph of Article IV allows for the admission of Germany and Russia to the Council when they have established themselves as Great Powers that can be trusted to honour their obligations, and may also encourage small Powers to federate or otherwise group themselves for joint permanent representation on the Council. Provision is made for securing that such increase in the permanent membership of the Council shall not swamp the representatives of the small Powers, but no fixed proportion between the numbers of the Powers in each category is laid down.

The interests of the small Powers are further safeguarded by the fifth paragraph of Article IV. Seeing that decisions of the Council must be unanimous, the right to sit 'as a

member' gives the State concerned a right of veto in all matters specially interesting it, except in the settlement of disputes to which it is a party. The objection that this provision will paralyse the efforts of the Council does not seem valid, as it is most unlikely that the veto would be exercised except in extremely vital matters.

The relations between the Assembly and the Council are purposely left undefined, as it is held undesirable to limit the competence of either. Cases will arise when a meeting of the Assembly would be inconvenient, and the Council should not therefore be bound to wait on its approval. Apart from the probability that the representatives of States on the Council will also sit in the Assembly, a link between the two bodies is supplied by the Permanent Secretariat, or new international Civil Service.

This organisation has immense possibilities of usefulness, and a very wide field will be open for the energy and initiative of the first Secretary-General. One of the most important of his duties will be the collection, sifting, and distribution of information from all parts of the world. A reliable supply of facts and statistics will in itself be a powerful aid to peace. Nor can the value be exaggerated of the continuous collaboration of experts and officials in matters tending to emphasise the unity, rather than the diversity of national interests.

The Prevention of War

Articles VIII–XVII, forming the central and principal portion of the Covenant, contain the provisions designed to secure international confidence and the avoidance of war, and the obligations which the members of the League accept to this end. They comprise :—

(1) Limitation of armaments.
(2) A mutual guarantee of territory and independence.
(3) An admission that any circumstance which threatens international peace is an international interest.
(4) An agreement not to go to war till a peaceful settlement of a dispute has been tried.

(5) Machinery for securing a peaceful settlement, with provision for publicity.
(6) The sanctions to be employed to punish a breach of the agreement in (4).
(7) Similar provisions for settling disputes where States not members of the League are concerned.

All these provisions are new, and together they mark an enormously important advance in international relations.

Article VIII makes plain that there is to be no dictation by the Council or anyone else as to the size of national forces. The Council is merely to formulate plans, which the Governments are free to accept or reject. Once accepted, the members agree not to exceed them. The formulation and acceptance of such plans may be expected to take shape in a general Disarmament Convention, supplementary to the Covenant.

The interchange of information stipulated for in the last paragraph of the Article will, no doubt, be effected through the Commission mentioned in Article IX. The suggestion that this Commission might be given a general power of inspection and supervision, in order to ensure the observance of Article VIII, was rejected for several reasons. In the first place, such a power would not be tolerated by many national States at the present day, but would cause friction and hostility to the idea of the League ; nor, in fact, is it in harmony with the assumption of mutual good faith on which the League is founded, seeing that the members agree to exchange full and frank information ; nor, finally, would it really be of practical use. Preparations for war on a large scale cannot be concealed, while no inspection could hope to discover such really important secrets as new gases and explosives and other inventions of detail. The experience of our own Factory Acts shows what an army of officials is required to make inspection efficient, and how much may escape observation even then. In any case, the League would certainly receive no better information on such points

of detail from a Commission than that obtained through their ordinary intelligence services by the several States.

Nor can the Commission fill the role of an International General Staff. The function of a General Staff is preparation for war, and the latter requires the envisagement of a definite enemy. It would plainly be impossible for British officers to take part in concerting plans, however hypothetical, against their own country, with any semblance of reality ; and all the members of a staff must work together with complete confidence. It is further evident that no State would communicate to the nationals of its potential enemies the information as to its own strategic plans necessary for a concerted scheme of defence. The most that can be done in this direction by the Commission is to collect non-confidential information of military value, and possibly to work out certain transit questions of a special character.

In *Article* X the word 'external' shows that the League cannot be used as a Holy Alliance to suppress national or other movements within the boundaries of the Member States, but only to prevent forcible annexation from without.

It is important that this article should be read with *Articles* XI and XIX, which make it plain that the Covenant is not intended to stamp the new territorial settlement as sacred and unalterable for all time, but, on the contrary, to provide machinery for the progressive regulation of international affairs in accordance with the needs of the future. The absence of such machinery, and the consequent survival of treaties long after they had become out of date, led to many of the quarrels of the past ; so that these articles may be said to inaugurate a new international order, which should eliminate, so far as possible, one of the principal causes of war.

Articles XII–XVI contain the machinery for the peaceful settlement of disputes, and the requisite obligations and sanctions, the whole hinging on the cardinal agreement that a State which goes to war without submitting its ground of quarrel to arbitrators or to the Council, or without waiting till three months after the award of the former or the recommendation of the latter, or which goes to war in defiance of such award or recommendation (if the latter is agreed to by

all members of the Council not parties to the dispute), thereby commits an act of war against all the other members of the League, which will immediately break off all relations with it and resort, if necessary, to armed force.

The result is that private war is only contemplated as possible in cases when the Council fails to make a unanimous report, or when (the dispute having been referred to the Assembly) there is lacking the requisite agreement between all the Members of the Council and a majority of the other States. In the event of a State failing to carry out the terms of an arbitral award, without actually resorting to war, it is left to the Council to consider what steps should be taken to give effect to the award ; no such provision is made in the case of failure to carry out a unanimous recommendation by the Council, but it may be presumed that the latter would bring pressure of some kind to bear.

In this, as in other cases, not the least important part of the pressure will be supplied by the publicity stipulated for in the procedure of settlement. The obscure issues from which international quarrels arise will be dragged out into the light of day, and the creation of an informed public opinion made possible.

Article XIII, while not admitting the principle of compulsory arbitration in any class of disputes, to some extent recognises the distinction evolved in recent years between justiciable and non-justiciable causes, by declaring that in certain large classes of disputes recourse to arbitration is *prima facie* desirable.

The Permanent Court of Justice, to be set up under *Article* XIV, is essential for any real progress in international law. As things now stand, the political rather than the judicial aspect of the settlement of disputes is prominent in the Covenant, but ' political ' settlements can never be entirely satisfactory or just. Ultimately, and in the long run, the only alternative to war is law, and for the enthronement of law there is required such a continuous development of international jurisprudence, at present in its infancy, as can only be supplied by the progressive judgments of a Permanent Court working out its own traditions. Isolated instances of

arbitration, however successful, can never result to the same extent in establishing the reign of law.

Under *Article* XV a dispute referred to the Council can be dealt with by it in several ways :—

(1) The Council can keep the matter in its own hands, as it is certain to do with any essentially political question in which a powerful State feels itself closely interested.

(2) It can submit any dispute of a legal nature for the opinion of the Permanent Court, though in this case the finding of the Court will have no force till endorsed by the Council.

(3) While keeping the matter in its own hands, the Council can refer single points for judicial opinion.

(4) There is nothing to prevent the Council from referring any matter to a committee, or to prevent such a committee from being a standing body. An opening is left, therefore, for the reference of suitable issues to such non-political bodies as the 'Commissions of Conciliation' which are desired in many quarters. The reports of such committees would of course require the approval of the Council to give them authority, but the Covenant leaves wide room for development in this direction.

(5) The Council may at any time refer a dispute to the Assembly. The procedure suggested under (2), (3), and (4) will then be open to the Assembly.

It has been already pointed out that, in the settlement of disputes under this article, the consent of the parties themselves is not necessary to give validity to the recommendations of the Council. This important provision removes any inconvenience that might arise in this connection from the right (see Article IV) of every Power to sit as member of the Council during the discussion of matters specially affecting it. We may expect that any Power claiming this right in the case of a dispute will be given the option of declaring itself a party to the dispute or not. If it declares itself a party, it will

lose its right of veto; if not, it will be taken to disinterest itself in the question, and will not be entitled to sit on the Council.

The sanctions of *Article* XVI, with the exception of the last paragraph, apply only to breaches of the Covenant involving a resort to war. In the first instance, it is left to individual States to decide whether or not such a breach has occurred and an act of war against the League been thereby committed. To wait for the pronouncement of a Court of Justice or even of the Council would mean delay, and delay at this crisis might be fatal. Any State, therefore, is justified in such a case in breaking off relations with the offending State on its own initiative, but it is probable, in fact, that the smaller States, unless directly attacked, will wait to see what decision is taken by the Great Powers or by the Council, which is bound to meet as soon as possible, and is certain to do so within a few hours. It is the duty of the Council, with the help of its military, naval, and air advisers, to recommend what effective force each Member of the League shall supply; for this purpose, each Member from which a contribution is required has the right to attend the Council, with power of veto, during the consideration of its particular case. The several contingents will therefore be settled by agreement, as is indeed necessary if the spirit of the Covenant is to be preserved, and if joint action is to be efficacious. But it is desirable at this point to meet the objection that under such conditions the League will always be late, and consequently offers no safeguard against sudden aggression.

It is true that, in default of a strong international striking force, ready for instant action in all parts of the world, the Members of the League must make their own arrangements for immediate self-defence against any force that could be suddenly concentrated against them, relying on such understandings as they have come to with their neighbours previously for this purpose. There is nothing in the Covenant (see Article XXI) to forbid defensive conventions between States, so long as they are really and solely defensive, and their contents are made public. They will, in fact, be welcomed, in so far as they tend to preserve the peace of the world.

To meet the first shock of sudden aggression, therefore, States must rely on their own resistance and the aid of their neighbours. But where, as in the case of the moratorium being observed, the aggression is not sudden, it is certain that those Powers which suspect a breach of the Covenant will have consulted together unofficially to decide on precautionary measures and to concert plans to be immediately put into force if the breach of the Covenant takes place. In this event these meetings of the representatives of certain Powers will develop into the Supreme War Council of the League, advised by a joint staff. Some reasons why this staff must be an *ad hoc* body, and not a permanent one, have been stated under Article VIII.

The last paragraph of Article XVI is intended to meet the case of a State which, after violating its covenants, attempts to retain its position on the Assembly and Council.

Article XVII asserts the claim of the League that no State, whether a member of the League or not, has the right to disturb the peace of the world till peaceful methods of settlement have been tried. As in early English law any act of violence, wherever committed, came to be regarded as a breach of the King's peace, so any and every sudden act of war is henceforward a breach of the peace of the League, which will exact due reparation.

Treaties and Understandings

Articles XVIII–XXI describe the new conditions which must govern international agreements if friendship and mutual confidence between peoples are to prevail; the first three provide that all treaties shall be (1) public, (2) liable to reconsideration at the instance of the Assembly, and (3) consonant with the terms of the Covenant. These provisions are of the very first importance.

Article XVIII makes registration, and not publication, the condition for the validity of treaties, for practical reasons, since experience shows that the number of new international agreements continually being made is likely to be so great that instant publication may not be possible; but it is the duty

of the Secretariat to publish all treaties as soon as this can be done.

Article XIX should be read together with Article XI.

Article XXI makes it clear that the Covenant is not intended to abrogate or weaken any other agreements, so long as they are consistent with its own terms, into which the members of the League may have entered, or may enter hereafter, for the further assurance of peace. Such agreements would include special treaties for compulsory arbitration, and military conventions that are genuinely defensive. The Monroe doctrine and similar understandings are put in the same category. They have shown themselves in history to be not instruments of national ambition, but guarantees of peace.

The origin of the Monroe doctrine is well known. It was proclaimed in 1823 to prevent America becoming a theatre for the intrigues of European absolutism. At first a principle of American foreign policy, it has become an international understanding, and it is not illegitimate for the people of the United States to ask that the Covenant should recognise this fact. In its essence it is consistent with the spirit of the Covenant, and indeed the principles of the League, as expressed on Article X, represent the extension to the whole world of the principles of the doctrine; while, should any dispute as to the meaning of the latter ever arise between American and European Powers, the League is there to settle it.

The Functions of the League in Peace

Articles XXII–XXV cover the greater part of the ordinary peace-time activities of the League.

Article XXII introduces the principle, with reference to the late German colonies and territories of the Ottoman Empire, that countries as yet incapable of standing alone should be administered for the benefit of the inhabitants by selected States, in the name, and on behalf, of the League, the latter exercising a general supervision. The safeguards which enlightened public opinion demands will in each case

be inserted in the text of the actual convention conferring the Mandate. No provision is made in the Covenant for the extension of such safeguards to the other similar dependencies of the Members of the League, but it may be hoped that the maintenance of a high standard of administration in the mandate territories will react favourably wherever a lower standard now exists, and the mandatory principle may prove to be capable of wide application.

The saving clause at the beginning of *Article* XXIII makes it clear that the undertakings following do not bind the members of the League further than they are bound by existing or future conventions supplementary to the Covenant.

Undertaking (*a*) throws the ægis of the League over the Labour Convention, which itself provides that membership of the League shall carry with it membership of the new permanent Labour organisation ; (*b*) applies to territories not covered by Article XXII ; (*d*) refers to the arms traffic with uncivilised and semi-civilised countries. The matters specially mentioned in this article are to be taken merely as instances of the many questions in which the League is interested. Conventions relating to some of these, such as Freedom of Transit and Ports, Waterways and Railways, are now being prepared ; with regard to a large number of others similar conventions may be expected in the future.

Article XXIV is of great importance, as it enlarges the sphere of usefulness of the Secretariat of the League to an indefinite degree. The Covenant has laid the foundations on which the statesmen and peoples of the future may build up a vast structure of peaceful international co-operation.

Amendment of the Covenant

The provisions of *Article* XXVI facilitate the adoption of amendments to the Covenant, seeing that all ordinary decisions of the Assembly have to be unanimous.

The second paragraph was inserted to meet the difficulties of certain States which might fail to secure the assent of their proper constitutional authorities to an amendment agreed to

by the Council and the majority of the Assembly. They are now given the option of accepting the amendment or withdrawing from the League ; but there is little doubt that, if the League becomes an institution of real value, the choice will be made in favour of accepting proposals that already command such wide assent.

It is the facility of amendment ensured by this article, and the absence of restrictions on the activities of the Assembly, the Council, and the Secretariat, which make the constitution of the League flexible and elastic, and go far to compensate for the omissions and defects from which no instrument can be free that represents the fusion of so many and various currents of thought and interest.

Printed by SPOTTISWOODE, BALLANTYNE & Co. LTD.
Colchester, London & Eton, England